



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VON KOESTER v. GERMANY (no. 1)

(Application no. 40009/04)

JUDGMENT

*This version was rectified on 28 September 2010
under Rule 81 of the Rules of the Court.*

STRASBOURG

7 January 2010

FINAL

22/11/2010

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of von Koester v. Germany (no. 1),

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 December 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 40009/04) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two German nationals, Mr Hans-Georg von Koester and Mr Hans-Konrad von Koester (“the applicants”), on 8 November 2004.

2. Mr Hans-Georg von Koester is represented before the Court by the second applicant, Mr Hans-Konrad von Koester, who is a lawyer practising in Wiesbaden. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. The applicants alleged that the length of five sets of administrative proceedings and one set of official liability proceedings had been in breach of the reasonable time requirement laid down in Article 6 § 1.

4. On 16 September 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the administrative and official liability proceedings to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1922 and 1957 respectively and live in Bonn and Wiesbaden.

1. Background to the case

6. The first applicant was the owner of a plot of land with a landmarked house at the corner of Rheinstrasse, a main traffic artery with six lanes, and a square known as “Luisenplatz” in Wiesbaden. In 1983/84 that square was reshaped and an underground car park was built close to the first applicant's property. Between 1988 and 1993 several events and demonstrations took place on the square which caused noise. Furthermore several new road traffic regulations in Wiesbaden city resulted in an increased volume of traffic next to the first applicant's property. He therefore instituted several different sets of proceedings against the Wiesbaden local authorities.

7. In the end of 1995 the first applicant agreed before a notary to transfer the property to his son, the second applicant. In 1997 the second applicant was listed as the real estate's owner in the land register (*Grundbuch*). The first applicant was granted a right of enjoyment over his son's property (*Nießbrauch*). The second applicant represented the first applicant throughout the proceedings before the German courts.

2. Proceedings relating to noise remediation measures

(a) Proceedings up to severance

8. On 29 April 1985 the second applicant asked the Wiesbaden trade supervision department (*Gewerbeamt*) to inform him whether there were plans to examine the influence of noise emissions on the first applicant's property. Between 1986 and 21 December 1990 the first applicant requested the Wiesbaden local authorities on several occasions to reimburse him the costs (*notwendige Aufwendungen*) incurred by him for noise remediation measures taken to protect him against noise caused by the construction works and, thereafter, the events and demonstrations carried out on Luisenplatz and by the increased volume of traffic. Furthermore he made official liability claims concerning his noise remediation measures and claimed damages for depreciation of his property.

9. On 2 April 1991 the first applicant lodged an action for failure to act (*Untätigkeitsklage*) with the Wiesbaden Administrative Court pursuant to section 75 of the Code of Administrative Court Procedures

(see “Relevant domestic law” below) because the local authorities had not yet decided on his request of 21 December 1990.

10. On 4 June 1991 the Wiesbaden Administrative Court declared his action inadmissible.

11. On 14 August 1991 the first applicant appealed to the Hessen Administrative Court of Appeal.

12. On 3 January 1992 he submitted a statement of grounds, which the Administrative Court of Appeal sent to the defendants on 7 January 1992.

13. On 12 July 1996 the Administrative Court of Appeal asked the parties whether they would waive an oral hearing and consent to a decision by a single judge. On 22 April 1997 and on 20 July 1997 they gave their consent.

14. On 24 February 1998 the Administrative Court of Appeal severed the official liability claims and the claim for damages in relation to the depreciation of the property and gave them a new file number (14 UE 794/98).

(b) Reimbursement of costs of noise protection measures (no. 4 E 299/91)

15. By a judgment of 24 February 1998 the Administrative Court of Appeal quashed the judgment of the Administrative Court of 4 June 1991 as to the reimbursement of costs for noise protection measures and referred the case to the Administrative Court for fresh consideration.

16. On 28 April 1998 the Administrative Court received the case files from the Administrative Court of Appeal. Between 14 May 1998 and 15 April 1999 it requested the first applicant on several occasions to make his submissions.

17. On 26 June 1999 the applicant informed the court that an extrajudicial settlement had been reached. On 1 September 1999 the court requested the parties to confirm that the case had been settled. After several further inquiries to the applicant as to whether the case had been settled, he made his submission on 30 March 2001.

18. On 10 December 2001 the Administrative Court held an oral hearing in which the question of the second applicant's third-party summons (*Beiladung*) was discussed. The sitting judge and the parties agreed that that summons was necessary.

19. On 11 December 2001 the Wiesbaden Administrative Court formally summoned the second applicant to participate in the proceedings as an interested third party.

20. By a judgment of 27 February 2002 the Administrative Court found for the applicants in part. That decision was served on the applicants on 12 and 13 March 2002.

21. On 10 April 2002 the applicants requested leave to appeal to the Hessen Administrative Court of Appeal.

22. On 21 October 2002 the Hessen Administrative Court of Appeal granted both applicants and the Wiesbaden local authorities leave to appeal. On 25 November 2002 the applicants submitted their statement of grounds for appeal. On 4 December 2002 the applicants received the defendant's statement of grounds together with the Administrative Court of Appeal's order to submit their reply to that statement by 6 January 2003.

23. On 20 December 2002 the applicants requested the Administrative Court of Appeal to extend the time-limit for further submissions, which it granted until 27 January 2003. The court declared that no further extensions could be granted.

24. On 26 March 2003, after holding an oral hearing on 18 March 2003, the Hessen Administrative Court of Appeal quashed the Administrative Court's judgment and dismissed the action.

25. On 30 May 2003 the applicants requested leave to appeal on points of law from the Federal Administrative Court.

26. On 3 September 2003 the Federal Administrative Court refused to grant the applicants leave to appeal on points of law.

27. On 27 October 2003 the applicants lodged a constitutional complaint, which the Federal Constitutional Court refused to admit on 3 May 2004, without giving any reasons.

28. On 10 May 2004 that decision was served on the applicants.

(c) Official liability proceedings (7 O 58/98)

29. On 26 March 1998 the Hessen Administrative Court of Appeal found that the ordinary courts had been competent to decide on the compensation and official liability claims and referred them to the Wiesbaden Regional Court for adjudication.

30. Those proceedings were subsequently conducted by the Wiesbaden Regional Court under file number 7 O 58/98.

31. On 15 June 1998 the Regional Court requested the first applicant to pay the advance on the court fees which he did on 29 December 1999.

32. Between March 2000 and October 2000 the first applicant requested on several occasions extensions of the time-limits allowed for his submissions.

33. On 6 August 2001 the first applicant requested the court to stay the proceedings.

34. On 2 November 2002 he requested that a hearing scheduled by the Regional Court be postponed.

35. On 21 November 2002 the Regional Court stayed the proceedings at the first applicant's request until the termination of the administrative proceedings no. 4 E 299/91 before the Hessen Administrative Court of Appeal.

36. On 10 October 2003 the Regional Court scheduled a hearing on 12 January 2004. On a request by the first applicant on 22 December 2003

the Regional Court postponed the hearing to 16 February 2004. As nobody appeared at the hearing on behalf of the applicant, the Regional Court issued a default judgment. Following an objection by the applicant the proceedings were continued. On 14 June 2004 a hearing was held during which the first applicant again requested that the proceedings be stayed on grounds of other pending administrative proceedings.

37. On 9 August 2004 the Regional Court rejected that request and scheduled a hearing on 22 November 2004.

38. On 11 April 2005 the Regional Court informed the applicants that the first applicant's numerous statements of claim (*Klageanträge*) had not been substantiated, as he had neither indicated the concrete reason nor the concrete object of his claims within the meaning of Article 253 § 2 no. 2 of the Code of Civil Procedure (see "Relevant domestic law" below). Accordingly, the court ordered him to formulate his statements in accordance with these formal requirements. Otherwise the court would declare them inadmissible.

39. On 23 December 2005 the first applicant submitted his statements of claim.

40. On 16 January 2006 the Regional Court held an oral hearing during which it ordered a purely written procedure after the parties had given their consent to it. The court ordered the parties to make their final submissions by 27 February 2006 and scheduled a hearing to pronounce its decision on 27 March 2006. The second applicant joined the proceedings as an interested third party.

41. On 24 March 2006 the Regional Court postponed the hearing for the pronouncement of its decision to 13 April 2006 on account of the complexity of the case.

42. On 15 May 2006 the Regional Court requested the parties to give their consent to the written procedure, as their initial consent given on 16 January 2006 had only been valid for three months (until 16 April 2006) according to section 128 § 2 sentence 3 of the German Code of Civil Procedure (see "Relevant domestic law" below).

43. On 26 July 2006 the Regional Court scheduled a hearing on 2 October 2006.

44. On 27 September 2006 the Regional Court postponed the hearing to 24 November 2006 as the applicants had not acknowledged receipt of their summons.

45. During the hearing of 24 November 2006 the defendant argued that the applicants had failed to substantiate their claims and requested to be allowed to make submissions in reply to the applicants' further submissions of 17, 23 and 24 November 2006. Therefore the court postponed the hearing to 19 January 2007 and fixed a time-limit for the defendant's submissions on 15 December 2006.

46. During the hearing held on 19 January 2007 the parties again discussed the question whether the applicant's claims had been sufficiently substantiated and the court informed the applicants that it was for them to substantiate and to prove the amount of the damages claimed. The court granted both parties the opportunity to make further submissions by 9 February 2007 and scheduled the date for the pronouncement of its judgment on 2 March 2007. Prior to the hearing the applicants made six further submissions. Therefore, the Regional Court postponed the hearing to 18 April 2007.

47. On 18 April 2007 the court again requested the parties to give their consent to the written procedure as the court was not able to decide the case within three months.

48. On 8 August 2007 the court requested the parties again to give their consent to the written procedure. As the applicants failed to respond, the court scheduled a hearing for 26 October 2007. However, on 25 October 2007 the applicants gave their consent and the court cancelled the hearing.

49. On 31 October 2007 the Regional Court authorised both parties to make further written submissions by 14 December 2007 and scheduled a hearing for the pronouncement of a decision for 18 January 2008.

50. On 18 January 2008 the court postponed the hearing to 22 February 2008 “for service-related reasons” (*aus dienstlichen Gründen*).

51. On 20 February 2008 the Regional Court again requested the parties to give their consent to the written procedure, as it had overlooked that their consent of 25 October 2007 had only been valid until 25 January 2008, by which date the court would have had to pronounce its decision. Due to this procedural mistake the court cancelled the hearing scheduled on 22 February 2008 and requested the parties again to give their consent to the written procedure. After the court's further request of 31 March 2008 the applicants gave their consent on 14 April 2008.

52. On 21 April 2008 the Regional Court ordered the written procedure, granted the parties the opportunity to make submissions by 23 May 2008 and scheduled a hearing for the pronouncement of a decision on 11 July 2008.

53. On 11 July 2008 the Regional Court again informed the applicants (*Hinweisbeschluss*) that their statements of claim, which they had newly formulated and extended on several occasions, still failed to meet the formal requirements. It referred to its order of 11 April 2005 and concretised it by urging the applicants, *inter alia*, to substantiate their allegation that it was impossible for them to indicate the amount of damage caused by the alleged noise emissions.

54. That decision did not leave the Regional Court until 8 October 2008, when the court's registry provided the official copy of this decision with the court seal (*Ausfertigungsvermerk*).

55. On 13 March and 5 and 7 May 2009 the applicants made further submissions.

56. On 8 May 2009 the Regional Court held an oral hearing and scheduled a further hearing for the pronouncement of a judgment for 26 June 2009.

57. On 25 June and 24 July 2009 the Regional Court again postponed the hearing for the pronouncement of a judgment to 14 August 2009 on account of the complexity and difficulty of the case.

58. On 11 August 2009 the Regional Court again postponed the hearing and granted the defendant a further time-limit to make submissions by 28 August 2009.

59. These proceedings are still pending.

3. Proceedings relating to various traffic regulations

(a) Preliminary road closures (nos. 7 E 436/93(1) and 7 E 1208/99)

i. Proceedings until severance

60. On 13 January 1992 the Wiesbaden local authorities ordered the preliminary closure of two streets, Friedrichstraße (order no. 4/92) and Luisenstraße (order no. 5/92).

61. On 20 February 1992 the first applicant lodged administrative appeals against both orders, and on 5 April 1993 he repeated his appeals.

62. On 28 May 1993 the first applicant lodged an action for failure to act with the Wiesbaden Administrative Court as the local authorities had not yet decided upon his administrative appeals of 20 February 1992 and 5 April 1993.

63. On 2 June 1993 the Administrative Court requested the authorities to submit their files. On 22 November 1993 it repeated its request.

64. On 6 January 1994 the defendant announced that they would submit their observations by the end of January 1994. On 11 February 1994 the court reminded the defendants to make their submissions.

65. On 22 February 1995 the Administrative Court inquired of the first applicant whether, in the light of the termination of a set of parallel pending proceedings for interim legal protection concerning the same legal issue, he wished to declare the proceedings disposed of. As the applicant failed to respond, the Administrative Court noted on 24 January 1997 that the proceedings were deemed to have been disposed of as the applicant had not pursued the proceedings for a period of more than six months.

66. On 8 April 1999 the first applicant declared that the proceedings had not entirely been disposed of.

67. On 2 September 1999 the Wiesbaden Administrative Court severed the proceedings concerning the preliminary closure of Luisenstraße and pursued them under file number 7 E 1208/99.

ii. Proceedings no. 7 E 436/93(1)

68. On 24 January 2000 the Administrative Court assigned the proceedings relating to the closure of Friedrichstraße (file no. 7 E 436/93(1)) to a single judge.

69. On 28 January 2000 the second applicant was summoned to the proceedings as a third party.

70. On 23 February 2000 the applicants sought withdrawal of the judges of the Administrative Court sitting in their case for bias. On 20 April 2000 the applicants also sought withdrawal of the judge who was to decide on their bias challenge; the latter was rejected on 2 June 2000.

71. On 4 September 2000 the applicants were informed that the composition of the court had changed following an amendment to the courts' rules of procedure (*Geschäftsordnung*).

72. On 15 September 2000 the applicants also sought withdrawal of the new judges sitting in their case for bias. On 10 October 2000 the applicants requested an extension of the time-limit for submissions concerning the comments given by the challenged judges on their alleged bias (*dienstliche Stellungnahme*). On 8 November 2000 the applicants made their announced submissions.

73. On 5 and 14 February 2002 the challenged judges again commented on their alleged bias.

74. Between 28 March 2002 and 23 January 2003 the applicants repeatedly requested extensions of the time-limits allowed for making further submissions on their request for bias, which were all granted until 17 February 2003, when the applicants submitted their further reasons.

75. On 25 February 2003 the Administrative Court rejected the applicants' bias challenge of 15 September 2000 as an abuse of process.

76. The applicants' subsequent challenges for bias of 9 and 16 April 2003 were also rejected on 14 and 22 April 2003 for abuse of process.

77. By a judgment of 23 April 2003 the Administrative Court declared the action inadmissible.

iii. Proceedings no. 7 E 1208/99

78. On 31 January 2000 the second applicant was summoned to the proceedings as a third party.

79. On 7 February 2002 the Administrative Court noted that the court files had been dispatched to several other chambers of the Administrative Court for consultation in connection with procedures related to objections on the grounds of bias lodged by the applicants in other proceedings.

80. On 12 December 2002 the rapporteur of the Administrative Court changed.

81. On 13 March 2003 the Administrative Court assigned the proceedings to a single judge.

82. On 9 and 16 April 2003 the applicants lodged two objections for bias, which were rejected on 14 and 22 April 2003.

83. By a judgment of 23 April 2003 the Administrative Court declared the action inadmissible.

(b) Final road closures and installation of a parking meter (no. 7 E 320/99)

84. On 20 July 1994 the Wiesbaden local authorities ordered the final closure of parts of Luisenstrasse and of Friedrichstrasse to motor traffic.

85. On 12 September 1994 both applicants lodged an administrative appeal against that decision, arguing that the road closures resulted in increased traffic close to their property, which caused unbearable noise.

86. On 22 April 1998 the Wiesbaden local authorities ordered the installation of a parking meter (*Parkautomat*) in Luisenstrasse.

87. On 8 March 1999 the Darmstadt regional authorities dismissed an administrative appeal by the applicants against that decision by the local authorities.

88. On 12 April 1999 the applicants lodged an action with the Wiesbaden Administrative Court against the decisions of 22 April 1998 and 8 March 1999. Furthermore they lodged an action for failure to act because the local authorities had not yet decided upon their administrative appeal against the local authorities' decision of 20 July 1994.

89. On 4 February 2002 the Administrative Court noted that the court files had been dispatched to another chamber of the Administrative Court for consultation in respect of the proceedings no. 7 E 436/93.

90. On 25 February 2003 the parties were summoned to an oral hearing.

91. On 13 March 2003 the Administrative Court assigned the proceedings to a single judge.

92. On 10 and 16 April 2003 the applicants challenged the sitting judge for bias; these requests were dismissed on 14 and 22 April 2003.

93. On 23 April 2003 the Administrative Court dismissed the applicants' action. It found that the road closures had not resulted in a violation of the applicants' property rights.

(c) Conversion of two streets into a pedestrian zone (no. 7 E 710/98)

94. On 7 September 1994 the Wiesbaden local authorities converted parts of Luisenstrasse and Friedrichsstrasse into a pedestrian area (*Teileinziehungsverfügungen*).

95. On 12 September 1994 the first applicant lodged an administrative appeal against that decision.

96. On 13 June 1998 the first applicant lodged an action for failure to act as no decision had been taken on his administrative appeal of 12 September 1994.

97. On 7 June 1999 the second applicant was summoned to the proceedings as a third party.

98. On 4 February 2002 the rapporteur of the Administrative Court gave instructions that in the subsequent period the court file had been requested for consultation in other proceedings which the applicants were pursuing at the Administrative Court and in which decisions had to be taken regarding challenges for bias.

99. On 12 December 2002 the rapporteur of the Administrative Court changed.

100. On 25 February 2003 the parties were summoned to an oral hearing. On 13 March 2003 the Wiesbaden Administrative Court assigned the proceedings to a single judge.

101. On 9 and 16 April 2003 the applicants challenged the sitting judge for bias; these requests were dismissed on 14 and 22 April 2003.

102. On 23 April 2003 the Administrative Court dismissed the action.

(d) Proceedings before the Hessen Administrative Court of Appeal and before the Hessen Constitutional Court

103. On 4 June 2003 the applicants requested leave to appeal from the Hessen Administrative Court of Appeal in respect of the proceedings nos. 7 E 436/93(1), 7 E 1208/99, 7 E 320/99, and 7 E 710/98.

104. On 30 January 2004 the Hessen Administrative Court of Appeal refused to grant the applicants leave to appeal in respect of the proceedings no. 7 E 710/98.

105. On 2 February 2004 it refused to grant them leave to appeal concerning the proceedings nos. 7 E 436/93(1), 7 E 1208/99, 7 E 320/99.

106. On 5 March 2004 the applicants lodged a constitutional complaint against the administrative courts' decisions rendered in the aforementioned proceedings with the Hessen Constitutional Court. Furthermore they accused Judge G. of that court of being biased, as he had acted as the judge in other proceedings involving the applicants at the Wiesbaden Administrative Court.

107. On 11 August 2004 the Hessen Constitutional Court dismissed their objections against Judge G. as being unfounded.

108. On 12 May 2005 the Hessen Constitutional Court refused to admit the applicants' constitutional complaint without giving any reasons.

109. On 23 May 2005 that decision was served on the applicants.

II. RELEVANT DOMESTIC LAW

110. Section 75 of the Code of Administrative Court Procedures provides, *inter alia*, that an action can be lodged with the Administrative Court if the administrative authorities fail without sufficient justification to decide upon an administrative appeal or an application for the performance of an administrative act within a reasonable time-limit, in general three months.¹

111. According to section 65 § 1 of the Code of Administrative Court Procedure the court may, on request or of its own motion, summon persons whose interests may be affected by the court's decision to proceedings as third parties (*einfache Beiladung*). Under section 65 § 2 of that Code the court shall summon third persons to the proceedings as third parties if they are involved in the dispute in such a way that the court can render only a uniform decision *vis-à-vis* the main parties and the third party together (necessary third-party summons). Thus, once the conditions for a necessary third-party summons have been fulfilled, the court is obliged to summon the third party to the proceedings. The position of third party becomes effective from the moment the court's summons is pronounced or served on the third party.

112. Section 128 § 2 of the Code of Civil Procedure provides that the court may render a decision without an oral hearing if the parties have given their consent to this purely written procedure (sentence 1). In such a case, the court must soon set a time-limit by which the parties are allowed to make their submissions, and must set a date for the pronouncement of a decision (sentence 2). The court shall no longer be able to render a decision without an oral hearing if a period of three months has expired following the party's consent (sentence 3).

113. According to section 253 § 2 no. 2 of the Code of Civil Procedure the statement of claim shall contain a specific indication of the object and reason of the claim as well as a specific request (*Antrag*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

114. The applicants complained that the length of the above-mentioned proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

¹ Rectified on 28 September 2010: the phrase “in general three months” was added. The following sentence “A time limit of three months is considered reasonable” was deleted.

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

115. As to the first applicant, the Government acknowledged in principle that the length of the proceedings had been incompatible with the reasonable time requirement laid down in Article 6 § 1. Nevertheless, they stressed that the proceedings had been extraordinarily complex and difficult, as they had raised considerable procedural problems and addressed a multitude of factual circumstances. Moreover, the proceedings had been rendered particularly complex by the applicants' failure to present their case comprehensively and by their submissions of pleadings without indicating the correct file numbers.

116. As to the second applicant the Government, while conceding that the length of the proceedings as regards proceedings nos. 7 E 436/93, 7 E 1280/99, 7 E 320/99 and 7 E 710/98 was unreasonable, contested that there had been a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 § 1 in respect of the proceedings no. 4 E 299/91 and 7 O 58/98.

A. Proceedings no. 4 E 299/91 (reimbursement for noise remediation measures)

1. The first applicant's proceedings

a. Admissibility

117. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

b. Merits

i. Period under consideration

118. The applicants maintained that the relevant period started to run on 29 April 1985 when “they lodged their first request”.

119. The Government submitted that the relevant period started to run only on 2 April 1991, when the first applicant lodged his action for failure to act. Any previous proceedings were not judicial proceedings which could be taken into account when determining the relevant period.

120. The Court agrees with the Government that a “dispute” within the meaning of Article 6 § 1 of the Convention arose only on 2 April 1991 when the first applicant lodged his action for failure to act with the Wiesbaden Administrative Court (see *Palaska v. Greece*, no. 8694/02, § 14,

19 May 2004). The second applicant's mere request for information dated 29 April 1985 as well as the first applicant's requests with the local authorities to be reimbursed could not be regarded as triggering the relevant period for the purposes of the "reasonable time" aspect (see, *inter alia*, *Vaas v. Germany*, no. 20271/05, § 51, 26 March 2009). The respective relevant period ended on 10 May 2004, when the final decision of the Federal Constitutional Court was served on him. It thus lasted some thirteen years and one month at four levels of jurisdiction including a remittal.

ii. Reasonableness of the period

121. The applicants reasoned that the German authorities and courts had been responsible for excessive delays, and contested that any delays had been imputable to them.

122. The Government argued that the domestic courts, although they had contributed significantly to the length of the proceedings, could not be blamed for the period of three years and eleven months caused by the first applicant's numerous requests for extension of the time-limits and adjournments and by his late submissions.

123. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

124. The Court recognises that the proceedings were of a certain complexity and that the first applicant's conduct has caused several delays in these proceedings. Nevertheless, and having regard to the considerable periods of inactivity on the part of the Administrative Court, notably between 7 January 1992 and 12 July 1996, the Court considers that an overall length of more than thirteen years and one month could not be regarded as complying with the "reasonable time" requirement laid down in Article 6 § 1.

125. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention.

2. The second applicant's proceedings

a. Admissibility

126. The applicants maintain that the relevant period for the second applicant started to run in 1995 when the first applicant agreed to transfer his property to the second applicant and not only on 11 December 2001 when the Administrative Court formally summoned the second applicant as a third party to the proceedings. In particular, the Administrative Court

should have summoned him to the proceedings “as soon as the first applicant had transferred the property to him in 1995”.

127. According to the Government the relevant period started to run only on 11 December 2001, when the third-party summons became effective with the Administrative Court's formal summoning of the second applicant to the proceedings.

128. The Court reiterates that its case-law on the intervention of third parties in civil proceedings makes the following distinction: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir he or she can complain in respect of the entire length of the proceedings (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-...).

129. In the present case, the second applicant did not replace his father in the domestic proceedings as an heir. In fact, the participation as interested third party was the result of a legal transaction carried out *inter vivos*. Accordingly, in the case of *Mrakar* (see *Mrakar v. Slovenia*, (dec.) no. 30946/02, 12 December 2006) the Court found that the relevant period started to run from the moment the domestic court was informed of the transfer of the property at issue. In the instant case, the Court notes that the applicants failed to give any indication as to when they had informed the Wiesbaden Administrative Court about the transfer of the property as a condition for the second applicant's third-party summons or when they had requested a third-party summons. Therefore the Court considers it appropriate to take the date of 10 December 2001, when the Administrative Court became aware that the conditions for a third-party summons had been fulfilled, as starting point. The relevant period ended on 10 May 2004, when the Federal Constitutional Court's decision was served on the applicants. It therefore lasted two years and five months at four levels of jurisdiction.

130. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the second applicant's proceedings is not long enough to raise any issues under Article 6 § 1 of the Convention.

It follows that the second applicant's complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 4 and 5 of the Convention.

B. Proceedings no. 4 O 58/98 (official liability proceedings)

1. Admissibility

131. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

a. The first applicant's proceedings

i. Period under consideration

132. The Government acknowledged that the relevant period had already started to run on 2 April 1991 when the first applicant lodged his official liability claims with the Administrative Court without jurisdiction, as this court has a certain duty to take care that the decision on referral to the competent court is taken within a reasonable period of time.

133. The Court agrees with the Government that the period to be taken into consideration began on 2 April 1991. The fact that the first applicant has lodged his official liability claims with a court without jurisdiction is a question of the parties' conduct which will be taken into consideration in the merits. On 1 December 2009 the proceedings had not yet ended, the proceedings still being pending at first instance before the Wiesbaden Regional Court, which has jurisdiction. It had already lasted on that date eighteen years and eight months at two levels of jurisdiction.

ii. Reasonableness of the period

134. The applicants reasoned that the German authorities and courts had been responsible for the length of the entire proceedings and contested that any delays had been imputable to them.

135. The Government, while acknowledging that considerable delays had been imputable to the domestic courts, maintained that a period of over ten years and four months had been caused by the first applicant's numerous requests for extension of time-limits and for postponements of hearings, by his belated submissions and the fact that he submitted proper statements of his claims only on 23 December 2005.

136. The Court is aware that the first applicant was responsible for several delays in the proceedings, such as the fact that he had lodged his claims with a court that had no jurisdiction. Nevertheless, having examined all the material submitted to it, and given in particular the overall length of some eighteen years and seven months at only two levels of jurisdiction, the Court considers that there were considerable delays imputable to the domestic courts, which did not display the required diligence in the conduct of the proceedings before them.

137. The Court concludes that the length of the proceedings in the instant case was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention.

b. The second applicant's proceedings

i. Period under consideration

138. The relevant period started to run on 16 January 2006, when the second applicant joined the proceedings as an interested third party (see *Cocchiarella*, cited above, § 113). On 1 December 2009 the proceedings had not yet ended, as they were still pending at first instance before the Regional Court. Thus the relevant period had lasted on that date more than three years and ten months at one level of jurisdiction.

ii. Reasonableness of the period

139. The second applicant contested that he had not been responsible for any delays.

140. The Government maintained that the second applicant had been responsible for a delay of one year and one month because together with the first applicant he had failed to reply to the court's inquiries or had made numerous submissions at short notice. Therefore the Regional Court had had to postpone hearings on several occasions.

141. The Court accepts that the subject matter of the proceedings was of some complexity, as the applicants have made numerous damage claims which they have reformulated and extended on several occasions.

142. It further considers that whilst it cannot be said that the Regional Court always conducted the proceedings in a sufficiently efficient manner, it was mainly the applicant who protracted the proceedings. Thus he submitted large quantities of observations shortly before the hearings were supposed to take place, refused to acknowledge receipt of his summons to the hearing of 2 October 2006 and despite the Regional Court's information orders of 11 April 2005 and 11 July 2008 he failed to duly substantiate his claims. In view of this conduct, which may suggest that the applicant had no interest in a prompt termination of his proceedings, the Court considers that in this particular case a total length of three years and ten months at one level of jurisdiction did not go beyond what may be considered reasonable within the meaning of Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Proceedings no. 7 E 436/93(1) (preliminary road closures)*1. The first applicant's proceedings***a. Admissibility**

143. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

b. Merits

144. The period to be taken into consideration began on 20 February 1992 when the applicant lodged his administrative appeal (see, among other authorities, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001, and *König v. Germany*, judgment of 28 June 1978, § 98) and ended on 23 May 2005 when the decision of the Hessen Constitutional Court was served on him. It thus lasted thirteen years and three months with one level of compulsory administrative proceedings and three levels of jurisdiction.

145. The applicant argued that he could not have been expected to lodge an action for failure to act immediately after the three months had elapsed without a decision on his administrative appeal, as it was unrealistic for the administrative authorities to be expected to decide his complex case within three months.

146. The Government recognised that considerable delays had been imputable to the domestic authorities and courts. However, they also pointed out that delays of six years and four months in total were attributable to the applicant because of his delayed reply to the Administrative Court's inquiry of 22 February 1995 and his repeated seeking of withdrawal of judges for bias, and because he could have lodged an action for failure to act as early as 20 May 1992.

147. Although the applicant could be held responsible for considerable delays in the procedure, the Court, having regard notably to the period of inactivity on the part of the Administrative Court between 8 November 2000 and 5 February 2002 and the fact that the latter failed to set (final) time-limits for the persons and authorities involved in the proceedings to ensure their swift compliance with the court orders, considers that the overall length of the proceedings of thirteen years and three months could not be regarded as complying with the reasonable time requirement laid down in Article 6 § 1.

There has accordingly been a breach of Article 6 § 1 of the Convention.

2. The second applicant's proceedings

a. Admissibility

148. The relevant period started to run on 28 January 2000 with the third-party summons of the Administrative Court and ended on 23 May 2005 when the decision of the Hessen Constitutional Court was served on the second applicant. It thus lasted five years and four months at three levels of jurisdiction.

149. The second applicant maintained that he had not been responsible for any delays in the proceedings.

150. The Government submitted that he had caused a delay of one year and two months in total due to his and the first applicant's numerous and abusive challenges for bias and their requests for "lengthy extensions" of time-limits.

151. The Court notes that the proceedings before the Administrative Court lasted three years and three months. However, it also observes that due to the second applicant's numerous objections for bias between 23 February 2000 and 8 November 2000 and in April 2003 the Administrative Court was prevented from rendering a decision on the merits. Furthermore, the applicant's requests for an extension of the time-limits to make submissions on his objection for bias contributed to a delay of almost ten months. Given moreover that the following decisions of the Administrative Court of Appeal and the Hessen Constitutional Court were issued after relatively short periods (eight months and one year and two months respectively), the overall length of five years and four months for three levels of jurisdiction in respect of the second applicant can still be considered reasonable (see *Dürig v. Germany* (dec.), no. 75379/01, 20 March 2003).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

D. Proceedings no. 7 E 1280/99 (preliminary road closure of Luisenstraße)

1. Admissibility

152. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Period under consideration

i. The first applicant's proceedings

153. The first applicant submitted that the relevant period had already started on 20 February 1992¹ when he lodged his administrative appeal in respect of the preliminary closure of Luisenstraße, which had also been the object of the proceedings no. 7 E 436/93 until their severance on 2 September 1999.

154. The Government maintained that the proceedings had begun only with the Administrative Court's severance order of 2 September 1999.

155. The Court agrees with the applicant that the subject matter of the proceedings no. 7 E 1280/99 (preliminary closure of Luisenstraße) had already been pending prior to the severance order of 2 September 1999. Therefore the relevant period began on 20 February 1992² when the applicant lodged his administrative appeal in respect of the preliminary closure of Luisenstraße. It ended on 23 May 2005 when the decision of the Hessen Constitutional Court was served on the applicant. It thus lasted thirteen years and three months at four levels of jurisdiction.

ii. The second applicant's proceedings

156. The relevant period started to run on 31 January 2000 with the third-party summons of the Administrative Court and ended on 23 May 2005 when the decision of the Hessen Constitutional Court was served on the second applicant. It thus lasted five years and four months at three levels of jurisdiction.

(b) Reasonableness of the period

157. The applicants maintained that they had not been responsible for any delays in the proceedings.

158. The Government recognised that considerable delays had been imputable to the domestic authorities and courts, but also argued that the period during which the court files had been dispatched to other chambers of the Administrative Court was attributable to the applicants, as it could be assumed that they would also have blocked the instant proceedings by submitting numerous objections for bias, which would have been an abuse of process, had the court files not been requested for consultation in other proceedings.

¹ Rectified on 28 September 2010: the year was stated as follows: 1993

² Rectified on 28 September 2010: the year was stated as follows: 1993

159. The Court notes that the first applicant was responsible for considerable delays between 22 February 1995 and 8 April 1999, when he failed to pursue his proceedings. It further notes that following the second applicant's participation in the proceedings as a third party on 31 January 2000, only minor delays of two weeks were caused by the applicants' objections for bias of 9 and 16 April 2003.

160. As to the conduct of the domestic authorities, the Court observes that the proceedings were pending before the Administrative Court for nine years and eleven months in respect of the first applicant and for three years and three months in respect of the second applicant. As to the period between 31 January 2000 and 12 December 2002, the Government gave no indication when the court files were dispatched. Moreover, the Court is not in a position to speculate as to what the applicants' conduct would have been if the Administrative Court had not dispatched the court files. In this connection, the Court also notes that according to its consistent case-law (see, *inter alia*, *Adam v. Germany*, no. 44036/02, § 76, 4 December 2008), the domestic courts should consider the possibility of having copies made in order to avoid delays caused by the dispatch of the case files; which the Administrative Court did not do in the present case. In these circumstances, the Court cannot but assume that the Administrative Court has not displayed the required diligence when conducting the proceedings.

161. Therefore the Court considers that the length of the proceedings was excessive in respect of both applicants.

There has accordingly a breach of Article 6 § 1.

E. Proceedings no. 7 E 320/99 (final road closures and installation of a parking meter)

1. Admissibility

162. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

163. The Government submitted that the relevant period for the second applicant started to run only on 12 April 1999 when both applicants lodged their action for failure to act.

164. However, it follows from the facts of the Administrative Court's judgment of 23 April 2003 that both applicants had already lodged their administrative appeal together. Therefore the Court considers that the relevant period started for both applicants on 12 September 1994 when they

lodged their administrative appeal and ended on 23 May 2005 when the decision of the Hessen Constitutional Court was served on them. It thus lasted ten years and eight months for the administrative appeal proceedings at three levels of jurisdiction.

165. The applicants denied responsibility for any delays in the proceedings.

166. The Government recognised that considerable delays had been attributable to the domestic authorities, but also maintained that the applicants were responsible for the period during which the court files had been dispatched. Moreover they argued that the applicants had contributed to the length by failing to promptly lodge an action for failure to act on 12 December 1994.

167. Having regard to the fact that the proceedings before the Administrative Court alone accounted for four years and that the latter had failed to conduct the proceedings speedily by dispatching the case files without making copies thereof (see paragraph 160 above), and given the overall length of ten years and eight months, the Court concludes that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention in respect of both applicants.

F. Proceedings no. 7 E 710/98 (Conversion of two streets into a pedestrian zone)

1. Admissibility

168. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

169. The relevant period started on 12 September 1994 for the first applicant, when he lodged his administrative appeal, and on 7 June 1999 when the second applicant was summoned to join the proceedings as third party. It ended for both parties on 23 May 2005 when the decision of the Hessen Constitutional Court was served on them. The relevant time for consideration thus lasted ten years and eight months for the administrative appeal and three levels of jurisdiction for the first applicant and five years for three levels of jurisdiction for the second applicant.

170. The applicants did not make any submissions as to the reasonableness of the period in consideration.

171. The Government recognised that excessive delays had been attributable to the German authorities and courts. However, they also submitted that both applicants contributed by two weeks to the length of the proceedings by lodging abusive requests for bias on 9 and 16 April 2003 and that the first applicant had delayed the proceedings by his late action for failure to act.

172. The Court finds that only minor delays were attributable to the applicants, whereas the Administrative Court remained inactive for a period of more than three years and six months (between 7 June 1999 and 12 December 2002).

173. In the light of the criteria laid down in its case-law, the Court therefore concludes that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention in respect of both applicants.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

174. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

175. In their submission on the question of just satisfaction the applicants stated in a general manner that they had incurred pecuniary and non-pecuniary damage. In respect of the latter they pointed to the considerable impairment of their quality of life caused by the lengthy proceedings. However they considered not to be in a position to indicate specific amounts.

176. As to pecuniary damages, the Court reiterates that pursuant to the Rule 60 § 1 of the Rules of Court an applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of finding a violation of his or her Convention rights must make a specific claim to that effect (see, *inter alia*, *Enyedi v. Romania*, no. 32211/02, § 55, 2 June 2009). Since in the present case the applicants failed to specify their pecuniary claims, the Court makes no award under this head (Rule 60 § 3).

177. In so far as non-pecuniary claims are concerned, the Court considers that, in the particular circumstances of the case, the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have sustained.

B. Costs and expenses

178. The applicants also sought reimbursement of their costs and expenses incurred before the domestic courts. As to the amounts of these costs they referred to a document which they have never submitted to the Court.

179. The Government argued that the applicants have failed to substantiate their claims.

180. By Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”. Since the applicants did not quantify their claim, the Court dismisses it.

C. Default interest

181. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the length of the first applicant's proceedings nos. 4 E 299/91; 7 O 58/98; 7 E 436/93; 7 E 1280/99; 7 E 320/99 and 7 E 710/98 and the second applicant's proceedings nos. 7 E 1280/99; 7 E 320/97 and 7 E 710/98 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the first applicant's proceedings no. 4 E 299/91;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the first applicant's proceedings no. 7 O 58/98;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the first applicant's proceedings no. 7 E 436/93;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the first and the second applicant's proceedings no. 7 E 1280/99;

6. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the first and the second applicant's proceedings no. 7 E 320/99;
7. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the first and the second applicant's proceedings no. 7 E 710/98;
8. *Holds* that the finding of violations constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
9. *Dismisses* the applicants' remaining claims for just satisfaction.

Done in English, and notified in writing on 7 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President